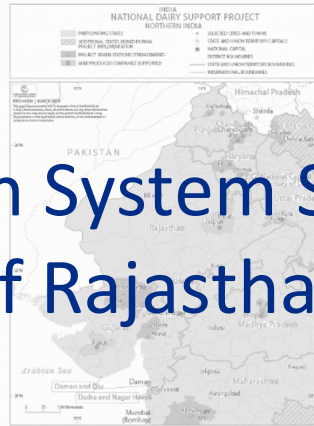


Exclusion System Summary

State of Rajasthan, India



Note: This summary covers the exclusion framework in the State of Rajasthan in northern India. It does not address exclusion practices at the federal level (i.e., the “union” or “central” government).

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions in the State of Rajasthan can be made both as part of a procurement process and outside the procurement process as governed by regional legislation and rules. Certain exclusions apply only to the procuring entity that imposed the exclusion, while others extend across the State government.

Governing Policy:

- Secs. 7, 11, 25, and 46 of 2012 [Rajasthan Transparency in Public Procurement \(“RTPP”\) Act](#).
- Rule 62 of the [2013 RTPP Rules](#).

Primary Legal Foundation: Administrative/Regulatory Law.

Related Law and Regulation:

- Goods: Standardized Code for Suppliers and Rule 72 App. 3 Part II of Rajasthan General Finance & Accounts Rules (“GF&AR”).
- Works: Appendix XVI Part II/ Rule 334 Part I of Rajasthan Public Works Finance & Accounts Rules (“PWF&AR”).

Decision-Maker: Centralized, Agency Level, Judicial Authority, and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- State-wide debarments are assessed and imposed by the State Finance Department. (See RTPP Act, Sec. 46)
- Agency-wide debarment authority is delegated to individual procuring entities (See RTPP Act, Sec. 25); individual administrative departments also have debarment authority pursuant to prior administrative practices.

Qualification: None stated in the legal framework. As a matter of practice, debarment decisions are often made by middle- or senior-ranked officials with sufficient procurement experience.

Independence: Not functionally independent from senior procurement officials.

II. Functioning and Enforcement of the Government-Wide Exclusion System:

General Provisions:

Type of Procedures: Administrative.

Decision Deadline: No stated deadline for decision-maker to make a final determination.

Provisional Exclusions: Yes (only under prior administrative instructions).

- The RTPP Act does not provide for temporary suspensions. But administrative departments sometimes rely on the GF&AR and PWF&AR to authorize a temporary suspension in individual cases.

Commencement of Proceedings:

Ability to Initiate an Exclusion Proceeding:

- Decision-maker cannot initiate an exclusion proceeding without a prior referral.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

Notice Requirements & Opportunity to be Heard: Yes & Yes.

Notice of Proceedings:

- Suppliers receive notice of proceedings when the decision-maker decides that grounds exist.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier and the public (reasoning can be very brief, such as simply indicating debarment ground).

Opportunity to be Heard:

- Per Sec. 46(5) of the RTPP Act, suppliers are entitled to present a defense to the decision-maker and may:
 - Obtain the evidentiary record.
 - Make a written submission to the decision-maker.
 - Request an in-person hearing with the decision-maker.

Appellate Review of Exclusion Decisions: Yes (only under prior administrative instructions).

Nature and Forum of Review: Administrative and Judicial.

- The RTPP Act does not provide for appeals. But the GF&AR and PWF&AR allow for appeals and are sometimes used to recognize a debarred supplier's right to appeal.
- General contract clauses relating to supplier complaints also authorize appeals filed by debarred suppliers.

Means Available to the Supplier: As part of appellate review, suppliers may:

- Obtain the evidentiary record;
- Make a written submission to the appellate body;
- Request an in-person hearing with the appellate body.

Duration of Appeal Process: Unknown (reliable data is not available).

Legal Representation:

- A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision: Yes (only under prior administrative instructions).

- Prior administrative instructions technically allow for a modification or early termination of an exclusion after it goes into effect. But in practice, subsequent modifications are rarely, if ever, issued.

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a criminal conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Corruption;
- Fraud.

Discretionary Exclusion: Yes.

Based on a criminal conviction, civil judgement, or administrative (*i.e.*, non-judicial) finding that the supplier engaged in the following:

- Collusion and/or infringing competition;
- Coercion or intimidation;
- Obstruction of an investigation;
- Theft or embezzlement;
- Money laundering;
- Tax-related offenses;
- Labor-related offenses;
- Commercial regulatory violations;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Conflict of interest.

Exclusion based on Bankruptcy and Cross-Debarment: Automatic & Discretionary.

Bankruptcy: Suppliers facing bankruptcy, liquidation, or insolvency are generally prevented from bidding on contracts due to the financial health requirements contained in standard bidding documents.

Cross-Debarment: No explicit provision in the RTPP Act allowing for cross-debarment, but Sec. 7 of the Act could be read to allow procuring entities to consider debarments by other jurisdictions.

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Individuals and Corporations.

Scope of Exclusion:

Extension to Other Agencies and Organizations:

- An exclusion by one procuring entity does **not** automatically prohibit suppliers from contracting with other procuring entities in Rajasthan.
 - *Exception:* Debarments imposed by the State Government pursuant to Sec. 46(1) of the RTPP Act (relating to certain criminal convictions) apply across the State Government.
 - In practice, standard bidding documents often recognize debarments by other procuring entities within Rajasthan.
- No known countries or international organizations that automatically recognize and apply exclusions from Rajasthan.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled; each procuring entity has discretion to decide whether to terminate ongoing contracts.
- Subsequent modifications to ongoing contracts **are permitted**.

Effect on Subcontracting:

- Excluded supplier **can** serve as a subcontractor.

Effect on Excluded Individuals:

- Excluded individuals **must not** be employed by a corporate supplier as a “Director” or an “Officer,” although these terms are not defined in the RTPP Act. (See Sec. 7(1)(d))
- Exclusion **may** extend to companies controlled by the excluded individual.

Tailoring Exclusion:

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

Effect on Affiliates:

Corporate Affiliates:

- Exclusion **may** apply to affiliated companies (controlled, under common control).
- Affiliated companies are **not** required to have an opportunity to contest the action.

Extension to Affiliated Individuals:

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier, executive officers, managers, and employees.
- Affiliated individuals are **not** required to have an opportunity to contest the action.

Note on Affiliates: While not explicitly addressed in the RTPP Act, extending an exclusion to affiliates is possible given the broad discretion accorded to procuring officials and is often addressed in standard bidding documents.

Duration of Exclusions:

Duration Specified in Legal Framework: Generally not to exceed three years.

Duration Depends on Applicable Exclusion Ground? Yes.

Discretion to Deviate?

- No. The decision-maker may not impose a debarment greater than the maximum time limits prescribed under the RTPP Act.

Exceptions/Waivers to Exclusions:

- No. There is no legal mechanism whereby a contract might still be awarded to an excluded supplier during the period of exclusion.

Other Sanctions:

- Contract termination; forfeiture of performance guarantees; deregistration from supplier lists; damages; recovery of payments with interest.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers?

- The RTPP Act requires publishing exclusion decisions on a publicly accessible website, but implementation is not properly monitored, and there is not a publicly available list of all suppliers debarred by various procuring entities.

Procurement Checks:

- Procuring entities are required to exclude debarred suppliers. But in practice, this requirement is hampered by the fact that a consolidated list is not yet available.

Reporting on Exclusions:

Number of Exclusions: Figures unknown.

Regular Reporting: Yes, but these reports are not publicly available. The Finance Department of the Government of Rajasthan is responsible for reporting.

Other Transparency Mechanisms: None.

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? Yes. The RTPP Act allows for entity-wide exclusions but does not provide for any standardized procedures. Certain procedures were set forth in prior administrative instructions, but many of these requirements conflict with the RTPP Act.

Contract-By-Contract (e.g., Single-Tender) Exclusion? No.

Subnational Exclusions: N/A.